

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

Claims 15 and 16 stand rejected under 35 USC 101 as claiming the same invention as claims 15 and 16 of USP 6,372,229. Reconsideration of the rejection is requested.

Claims 15 and 16 of the instant application read as follows:

15. A method of inhibiting restenosis following vascular intervention comprising applying to a site of vascular injury resulting from said intervention a first composition comprising about 27-53% by weight of a water soluble globular protein and a second composition comprising about 5-15% by weight of a di- or polyaldehyde, wherein said di- or polyaldehyde is present in a weight ratio of one part by weight to every 20-60 parts by weight of said globular protein, and allowing said composition to cure so that a coating is produced at said site of vascular injury that inhibits restenosis. (Underlining added.)

16. The method according to claim 15 wherein said intervention is angioplasty.

In contrast, claims 15 and 16 of the '229 patent read:

15. A method of inhibiting restenosis following vascular intervention comprising applying to a site of vascular injury resulting from said intervention a first composition comprising about 27-53% by weight of a water soluble proteinaceous material and a second composition comprising about 5-15% by weight of a di- or polyaldehyde, wherein said di- or polyaldehyde is present in a weight ratio of one part by weight to every 20-60 parts by weight of said proteinaceous material, and allowing said composition to cure so that a coating is produced at said site of vascular injury that inhibits restenosis. (Underlining added.)

16. The method according to claim 15 wherein said intervention is angioplasty.

The recitation in instant claim 15 of "a water soluble globular protein" is narrower in scope than the recitation in claim 15 of the '229 patent of "a water soluble proteinaceous material". The fact that "a water soluble globular protein" may be a "water soluble proteinaceous material" does not alter the fact that the latter phrase defines a class larger than that defined by the former phrase. Where two claims are not identical in scope (that is, where they are not coextensive), a rejection based on statutory double patenting is not proper (see MPEP 804 IIA). As claim 15 of the present application and claim of the '229 patent are not of identical scope, withdrawal of the rejection is in order and same is requested.

Claims 3-8 and 17-38 stand rejected as representing obviousness-type double patenting over claims 1-6 of the '229 patent. A Terminal Disclaimer was submitted October 20, 2003 that moots the rejection. (At the top of page 2 of the Action, the Examiner acknowledges receipt of a Terminal Disclaimer.). Reconsideration is requested.

This application is submitted to be in condition for allowance and a Notice to that effect is requested.

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Respectfully submitted,

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